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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RIO TINTO PLC,

Plaintiff,

v.

14 Civ. 3042 (RMB) (AJP)

VALE, S.A., et al.,

Conference

Defendants.

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New York, N.Y.
November 17, 2015
10:33 a.m.

Before:

HON. ANDREW J. PECK,

Magistrate Judge

APPEARANCES

QUINN EMANUEL URQUHART & SULLIVAN LLP
Attorneys for Plaintiff

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APPEARANCES CONTINUED

MARTIN J. AUERBACH
Attorney for BSG Resources defendants

DLA PIPER LLP (US)
Attorneys for DLA Piper LLP
BY: JEFFREY D. ROTENBERG

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THE COURT: Be seated.

All right. Why don't we deal with the DLA Piper issue first even though it is near the end of the joint letter so that DLA can leave after their issue is resolved.

My first question for Thiam's counsel is do you have the DLA report that doesn't seem to be here?

MR. SOLOMON: Yes.

THE COURT: You have the DLA report. Where did it come from.

MR. SOLOMON: We received it as part of our joint defense arrangement with the lawyers from BSGR.

THE COURT: All right. And do we know where BSGR got it from?

MR. FILARDO: Your Honor, good morning. Vincent Filardo, from Mishcon de Reya.

No, your Honor, I don't have a clear answer to that. I have been trying to get one but I do not have one.

THE COURT: All right. Well, OK. Having read your piece of the letter, Mr. Solomon, and having read the letters

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1 from DLA, the subpoena to DLA certainly is overbroad in many,
2 many ways even if there was no sovereign immunity, or whatever,
3 based on them having the protection of the government of
4 Guinee.

5 Secondly, was the DLA work done out of DLA New York?
6 DLA -- you know, you guys are a small intimate firm also known
7 as a verein with a few million people all over the world.

8 MR. ROTENBERG: It makes my life more interesting,
9 your Honor. Jeffrey Rotenberg of DLA.

10 The engagement was out of DLA in the U.K. Almost the
11 entire team was located in France. There was one lawyer who at
12 the time was located in New York who was part of the team. He
13 is now located in London, but principally I believe a European
14 operation.

15 THE COURT: Then, I guess, Mr. Solomon we've got about
16 12 problems here, one of which is why are you coming to me for
17 this? Do you want DLA in France? I'm not sure anybody wants
18 to travel there now but --

19 MR. SOLOMON: I mean, the short answer to that, your
20 Honor, is -- and we haven't even -- the personal jurisdiction
21 issue over DLA and whether DLA having a New York office and
22 what their arrangement is with their French office, I haven't
23 even looked at that issue, although I think that DLA is here
24 and they are subject to your jurisdiction. Mr. Thiam is a
25 defendant in this case so this is the only place we would be

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1 getting that information.

2 THE COURT: No. That hasn't stopped other people from
3 doing whatever.

4 I'm not sure and perhaps Mr. Rotenberg can help. I
5 know some little bit about DLA. Is the London and/or Paris
6 office separate; that is to say, while it goes under the DLA
7 name, because it is a verein it is not the same as if this were
8 Cleary New York and Cleary U.K. or some such?

9 MR. ROTENBERG: I believe that the U.S. operation and
10 the European operation are separate partnerships. They are
11 obviously related and they are part of the verein, as you said.

12 Your Honor, I would want to note, though, that we
13 objected on foreign law ground and all of that in our
14 objections and responses, and the only I guess complaint we
15 received from Mr. Thiam's counsel was with respect to our
16 assertion of immunity. So our numerous other objections which
17 we levied were never flagged for Mr. Thiam as an issue, and
18 really the only point they made back in July was with regard to
19 immunity and really with respect to that when we asked him
20 whether or not we had to produce a privilege log because we
21 were asserting immunity.

22 THE COURT: I was looking at getting at this from
23 several different angles.

24 Mr. Solomon, it seems to me you slept on your rights
25 on this. And, in any event, what's the point of a privilege

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1 log where the issue here is not, you know, did a particular
2 memo go to, you know, Joe Blow but rather whether there is a
3 sovereign privilege here?

4 MR. SOLOMON: Well, if they were correct, if DLA were
5 correct that they can say, hey, we worked for a sovereign
6 country and we are not subject to U.S. jurisdiction based on
7 sovereign immunity and therefore we're not responding, if that
8 were the correct position, then they're probably right. Why
9 waste your time with a privilege log? Although, I mean, in
10 their opposition to our original subpoena, they listed all
11 kinds of privileges without any kind of articulation or
12 specification as to how they pertain. But they're wrong about
13 sovereign immunity and I can show that very easily. So I
14 mean --

15 THE COURT: Then you are either going to make a formal
16 motion on sovereign immunity doesn't apply and deal with all
17 the other myriad issues, but to the extent your letter here
18 seems to say all you're asking the Court to rule on now is
19 whether they need to do a privilege log.

20 MR. SOLOMON: Well, no, I want to pierce -- we have to
21 dispense with the sovereign immunity issue, which I think it
22 can be done -- the burden is theirs, but I think that the
23 sovereign immunity issue can be resolved very quickly.

24 THE COURT: The other question is where have you been
25 all these months? And I may just deny your request on the

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1 ground that it's too broad a subpoena and you slept on your
2 rights for well over a month and discovery ended, in theory,
3 for paper discovery August 28th, and this was not raised with
4 the Court in any way, shape or form before then and based on
5 DLA's letter it wasn't raised with them for a very lengthy
6 time, from sometime in July until the beginning of this month.

7 MR. SOLOMON: I think that part of the finishing
8 sentence on "slept on your rights" is prejudice and I don't
9 think that DLA has any prejudice. And I also don't think --

10 THE COURT: Let's deal with the sleeping on the rights
11 half of it first.

12 MR. SOLOMON: All right. So we waited four months or
13 three months, but there are a lot of things that are still
14 going on. I am not disputing that --

15 THE COURT: Your request is denied.

16 MR. SOLOMON: Your Honor, just to be clear, you are
17 not allowing us to make a motion to compel?

18 THE COURT: Correct.

19 MR. SOLOMON: Because we waited?

20 THE COURT: A, you waited. B, you shouldn't be here
21 in the first place. You know, you want to think about a letter
22 rogatory to my friends in the U.K. or the folks in France, I'll
23 consider it. This is a backdoor attempt, and while in other
24 situations I might say DLA holds itself out as one entity and,
25 you know, if it has any documents here, it's stuck, but not at

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1 this point in the case. We are getting to the point that
2 enough is enough.

3 So the subpoena is quashed as to DLA.

4 MR. SOLOMON: Thank you, your Honor.

5 MR. ROTENBERG: Thank you, your Honor.

6 THE COURT: All right. So now we can go back to the
7 letter and go in order.

8 MR. LYTTLE: Your Honor, I think we can one issue off
9 the table. Eric Lyttle -- good morning, your Honor -- for Rio
10 Tinto.

11 The first issue for Rio Tinto and in fact the only
12 issue that we raised, your Honor, against Vale was E&Y issue.
13 They have agreed --

14 THE COURT: Remember, you guys are here all the time.
15 I know your shorthand. The reporter doesn't.

16 MR. LYTTLE: Sure. I apologize.

17 They have agreed to produce a log, as we've requested,
18 so we will wait for that and evaluate privilege based on that
19 information and come back to your Honor if necessary. They
20 have agreed under 502(d) to produce a final copy of the May 27,
21 2010 Ernst & Young report. I just want on the record that they
22 will be providing that under 502(d).

23 We likewise, your Honor, were filing yesterday under
24 502(d) and have agreed to produce the communications with the
25 Investigator Livingstone.

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1 THE COURT: Good. So that means we can go to page 8
2 it looks like where we've got the related parties Aeneas,
3 however it is pronounced, A-e-n-e-a-s, and then Landau and
4 Fujihara. And to finally resolve this issue, it seems to me
5 the best way to deal with it is for you to hand up a few sample
6 documents so I can look at them and see if I can determine
7 based on that whether they are privileged or not. So there are
8 apparently four emails between Rio Tinto and Aeneas.

9 MR. LYLE: Yes, your Honor. Michael Lyle for Rio
10 Tinto, your Honor. I have the Landau/Fujihara one right now.
11 Let's start with that one.

12 THE COURT: That's fine.

13 MR. LYLE: Here is a sample. Do you also want to see
14 the engagement letters?

15 THE COURT: No, at least not yet.

16 MR. LYLE: What you are looking at, your Honor, is an
17 email and --

18 THE COURT: Hold on. I can read.

19 (Pause)

20 All right. So this is October 23, 2010, and which
21 privilege are you claiming?

22 MR. LYLE: We are asserting Rule 26(b)(4)(D) work
23 product privilege as well as the attorney-client privilege.

24 THE COURT: OK. Which one?

25 MR. LYLE: Both.

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1 THE COURT: All right. Generally "both" means we
2 can't figure it out, you figure it out, Judge, and hopefully it
3 is one of them. I don't see this as attorney-client
4 communications. So that's out.

5 So, work product. Four years before this litigation
6 began?

7 MR. LYLE: Yes, your Honor.

8 THE COURT: What was the litigation that was being
9 contemplated?

10 MR. LYLE: This litigation was the litigation that was
11 being contemplated. This is post the April 2010 announcement
12 of the joint venture between Vale and BSGR, which prompted the
13 inquiry and the retention of the consulting experts that that
14 email is with. If you will look, those consultants, all of the
15 individuals on there are either the consulting experts or
16 attorneys, both the internal counsel and external counsel for
17 Rio Tinto.

18 THE COURT: Now, other than perhaps the sentence below
19 the first bullet under "Recommendations," other than perhaps
20 that sentence, it seems to me there is nothing here that is not
21 more business related than legal.

22 MR. LYLE: Well, your Honor, the retention was
23 specifically with respect to, as the engagement letter lays
24 out, it does provide information as it relates to mining
25 operations, which was the purpose of the retention as the

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1 consultants. And 26(b)(4)(D) indicates that it is facts known
2 or opinions held by the consulting experts. So all --

3 THE COURT: These were not consulting experts.

4 No privilege. Produce it.

5 Any others you would like me to look at, or are they
6 all going to be the same for the Landau group?

7 MR. LYLE: They are all similar, your Honor.

8 THE COURT: OK. Then that's the Court's ruling.

9 Do you want to give me a sample on Aeneas, or do you
10 want to just produce it?

11 MR. LYLE: (Handing to the Court)

12 THE COURT: This one is a letter -- email from
13 Jonathan Carr at Weil, Gotshal. So that one would seem to be
14 privileged at least under a work product argument.

15 Any argument you want to make on that, Mr. Blackman?

16 MR. BLACKMAN: Yes.

17 THE COURT: I know you haven't seen it.

18 MR. BLACKMAN: Yes. Aeneas is a kind of curious
19 animal, leaving aside the original Trojan hero. But the Aeneas
20 we are dealing with here today was identified by Rio Tinto
21 pursuant to the Court's order back in December of 2014, when we
22 had the first debate about the investigators, and they in fact
23 produced various Aeneas' reports, and the communication with
24 Aeneas that they are now withholding sounds to me like it is of
25 the same substance as communications with the other

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1 investigators that you ordered to be produced --

2 THE COURT: Well, it may be.

3 MR. BLACKMAN: -- in the same period.

4 THE COURT: It may be the information given by
5 Aeneas -- and there are several other emails. I will look at
6 one more. This one is from a Rio Tinto lawyer clearly
7 contemplating a lawsuit against Vale, Steinmetz, BSGR, etc. So
8 to the extent that the fact that a lawsuit was being
9 contemplated in November 2010 supports your statute of
10 limitations argument, that fact is now of record.

11 But the document itself very clearly is Mr. Carr's
12 thoughts about such a lawsuit and what information he would
13 like Mr. Toure at Aeneas to develop in accordance with that.
14 So this one on its face is very clearly attorney --

15 MR. BLACKMAN: May I just add one other fact here?

16 The Court directed Rio Tinto some time ago to produce
17 its engagement letters with these investigators, and they did
18 produce an engagement letter with Aeneas, and we've learned
19 quite recently that there was this, quote, second engagement
20 which they say these four documents relate to. I would ask
21 that at a minimum that they at least produce the engagement
22 letter so we can see what makes this different --

23 THE COURT: Mr. Lyle, any problem with producing the
24 engagement letter?

25 MR. LYLE: Yes, your Honor, I can show you the

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1 engagement letter. It reflects much of that information that
2 you are looking at.

3 THE COURT: All right. Let me see it.

4 (Pause)

5 I'll also note, Mr. Blackman, that if you all had
6 reached an agreement relating to EY, etc., you might well have
7 gotten all of this.

8 MR. BLACKMAN: We tried.

9 THE COURT: Well, I understand --

10 MR. BLACKMAN: And we brought back -- as counsel
11 indicated, we are the only ones who are making a 502(d)
12 production in this round.

13 THE COURT: There are other items that you are not.

14 MR. LYLE: To be clear, your Honor, we have also made
15 502(d) production.

16 THE COURT: All right. This was clearly a work
17 product engagement. So, assuming all the other Aeneas
18 documents are in the same band, privileged.

19 You can take your documents back.

20 MR. BLACKMAN: Can I make a last stab? I think I know
21 what the Court will say. But my friends at Rio Tinto did say
22 in the amended complaint, at paragraph 143, "Rio Tinto did not
23 know of or discover the unlawful conduct and resulting injury
24 alleged herein that underlies the RICO claims until after
25 April 2013." I think we all think that may be --

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1 THE COURT: You've got your argument merely based on
2 the dates and that they are claiming work product privilege.
3 So you've got this transcript. You've got the privilege log.
4 If the fact that in October/November 2010 they were
5 investigating you guys, if that means they lost the statute of
6 limitations protection, so be it.

7 MR. BLACKMAN: Just one other thing --

8 THE COURT: That doesn't give you the facts of that
9 investigation.

10 MR. BLACKMAN: I understand.

11 Did the Fujihara or Landau documents that you told
12 them to produce include the other one Fujihara or Landau
13 because there were two --

14 THE COURT: That's what I assumed I was ruling on.
15 So, yes.

16 MR. LYLE: Your Honor, with respect to the Fujihara
17 and Landau, I have the consulting agreement which indicates --

18 THE COURT: I don't care. I've ruled. I've moved on.
19 We're done.

20 OK. I think the next issue is the Rio Tinto document
21 production issue on page 15. It looks like Rio Tinto has
22 offered to speak to its 11 disputed custodians. Why don't that
23 resolve the issue?

24 MR. LIMAN: Your Honor, I think I can simplify this in
25 terms of what we're asking for in answering your Honor's

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1 question at the same time.

2 We're not asking for the production of documents that
3 are duplicative. There are five custodians who are listed in
4 our letter. Those are custodians who we know from evidence
5 would have had communications with the investigators. What
6 we're asking them to do is take the documents from those
7 persons, run them against the database that they have of
8 communications to investigators. If the documents have already
9 been reviewed, then they don't need to review that document
10 again.

11 If they're right that all of the documents that these
12 individuals have with the investigators relevant to the
13 investigation have been produced or reviewed, they don't have
14 to do a single bit of work; they don't need to put a human eye
15 on it. But if they're wrong, then with respect to that
16 remainder of documents, your Honor's orders, because you
17 ordered three times, require them to produce the custodians.

18 I can go through those arguments again, your Honor,
19 every single one of their arguments --

20 THE COURT: No. The advantage of all of these letters
21 is there is enough. So, you know, if -- I guess my question is
22 this. While you've said you're willing to go to the
23 custodians, how much documentation, particularly if it is now
24 limited to it looks like four custodians -- Maty, Munro, Court,
25 and Hitchcock -- why --

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1 MR. LIMAN: Your Honor, there is also Toure.

2 THE COURT: Toure is not a Rio Tinto person but an
3 outside consultant?

4 MR. LIMAN: She was a Rio Tinto consultant.

5 THE COURT: OK. All right. So those five, how much
6 would it cost to do whether keywords or whatever you've got to
7 do, sampling, whatever, to see if they have produced everything
8 and it looks like we are in a limited time period of 2010, but
9 maybe not?

10 MR. LYTTLE: Your Honor, this is news to us. But if
11 this is limited to a time period, 2010, and this is limited to
12 these five custodians and their communications with the
13 investigators only, we can do that.

14 THE COURT: All right. Mr. Liman, did I get the date
15 right?

16 MR. LIMAN: Your Honor, the communications begin in
17 October of 2008 and run through 2010. It shouldn't make much
18 of a difference.

19 THE COURT: Let's limit it to 2010. That seems to be
20 where you are having the big dispute on the statute of
21 limitations.

22 MR. LIMAN: Your Honor, I think, actually, most of the
23 investigation began in 2008 and 2009. If you will recall from
24 our letter, there was a decision by Rio Tinto to suspend the
25 investigation because of reasons --

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1 THE COURT: All right. Let's see if we go from the
2 second half, from July 1, 2008 to the end of 2010 for those
3 five people. If it turns out there is a horrendous volume, you
4 will let Vale know and we'll work something out. Otherwise,
5 you can double-check for more investigator communications.

6 OK. Page 19, I've signed both of your proposed
7 orders.

8 As to the additional search terms from the time, other
9 than "Amer," which might have a technical problem, any reason
10 to search those four terms?

11 MR. SOLOMON: Your Honor, Andrew Solomon for Thiam.

12 We are prepared to run searches but what we're
13 resisting is just plugging in "Aquil" and then getting all the
14 documents without any date or subject matter restriction and
15 then having 3 or 4,000 documents to review.

16 THE COURT: Stop. What is the likely volume?

17 MR. SOLOMON: It is over 4,000 documents.

18 THE COURT: First of all, big deal.

19 Secondly, what suggestion would you make for limiting
20 it

21 MR. SOLOMON: Well, with Aquil, since the relevance of
22 Aquil was the house purchase in Dutchess County, we suggested
23 four, five terms that could be used to limit it to the house
24 transaction. We made similar suggestions with respect to some
25 of the other folks but we haven't received anything back. It

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1 is just you need to go back and run these search terms again.
2 Frankly, 4,000 documents, 3,000 document, I don't know the what
3 the exact number is, it is a lot of work and our client is an
4 individual.

5 THE COURT: Well, 26-page single-spaced letters from
6 the parties to the Court at least once a month is a lot of work
7 also. I'm not overly sympathetic but if you and I assume you
8 are Ms. Kaplan?

9 MS. KAPLAN: I am. Good morning, your Honor.

10 THE COURT: Can figure out a way to limit it, that's
11 fine. Otherwise, you guys got, you know, Mr. Thiam has had a
12 back seat. Time to do a little more work.

13 Any suggestions on them, since it is limited to the
14 real estate issue?

15 MS. KAPLAN: The search terms that were proposed --
16 the narrowing search terms that Mr. Thiam proposed were not
17 acceptable because they didn't even hit on the documents that
18 they had already produced relevant to these terms, but are open
19 to discussing a time period limitation with respect to when the
20 transaction was occurring.

21 THE COURT: All right. So if you limit it to 2011,
22 which seems to be --

23 MS. KAPLAN: It is probably mid-2010 to mid-2012.

24 THE COURT: All right. What will that do to the
25 search number of hits?

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1 MR. SOLOMON: It will reduce it. I don't know the
2 exact number; we haven't run that.

3 THE COURT: All right. For the other three,
4 "Alabbar," "MAA" and "Amer" -- and I'm going to come back to
5 Amer in a minute to make sure you are not going to pick up
6 "American" and any other thing where Amer is the root -- other
7 than that, what is your suggestion on limiting it?

8 MR. SOLOMON: Again, if we could limit it to a
9 timeframe?

10 THE COURT: OK. What is the proposed timeframe?

11 MS. KAPLAN: Mid-2010 to mid-2012.

12 THE COURT: All right. Does that work?

13 MR. SOLOMON: I think that will help, your Honor.

14 THE COURT: And work with your experts so that you are
15 getting Amer as a standalone word, not --

16 MS. KAPLAN: We are not looking for the wildcards,
17 your Honor.

18 THE COURT: OK. That takes care of all of that. Get
19 it done promptly.

20 Roman numeral four on page 23 you are not asking me to
21 do anything.

22 MR. AUERBACH: Judge, may I have just one moment?

23 THE COURT: Yes.

24 MR. AUERBACH: Martin Auerbach for the BSG defendants.

25 We have had a very productive, instructive dialogue,

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1 your Honor. There are just two terms -- because I was asked to
2 run a new report and have run a new report, and there are only
3 two terms that seem to be outliers that have produced thousands
4 of hits without any clear relevance. I thought this might be a
5 convenient way to deal with those two terms.

6 THE COURT: Have you talked to your adversaries?

7 MR. AUERBACH: We talked about one of them.

8 THE COURT: So let's start with that one.

9 MR. AUERBACH: Let's start with that one. Thank you,
10 Judge. The term is "Zogota," which is a separate mining
11 concession, the name of which appears once in the complaint, in
12 the amended complaint, as a passing reference to a concession
13 adjacent to the Simandou concession. As far as I can tell,
14 there is no relevance, it is not part of this case, and it
15 produces over 5,000 hits, which in this context are
16 significant.

17 THE COURT: Mr. Lyttle.

18 MR. LYTTLE: Your Honor, this is news to me. We have
19 worked cooperatively. I suggest that we get a chance to look
20 at this and talk with Mr. Auerbach a bit more.

21 Zogota is a separate concession, right around
22 Simandou, held by BSGR. Our view is, as alleged in the
23 complaint, that BSGR was using information derived at Zogota,
24 but I think there may be ways to limit this with connectors and
25 boolean modifiers.

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1 THE COURT: I will let the two of you work it out but
2 get it done quickly.

3 MR. AUERBACH: Great. And Camara was the other term.
4 We will do the same on that.

5 THE COURT: All right. Number Roman Numeral five,
6 update on predictive coding. I don't need those updates. I
7 don't want those updates until there is something that either
8 you or the Special Master bring to my attention needing my
9 work. Enough is enough.

10 All right. Roman VI, which was third-party discovery
11 of DLA we've dealt with. I don't know what Veracity is. Is
12 that part of the DLA issue? But since no one is here from
13 Veracity there is nothing I can do about it.

14 MR. SOLOMON: Logically, your ruling as to DLA should
15 apply to Veracity.

16 THE COURT: All right. Fine. Good.

17 OK. It seems to me that if I don't give you a new
18 cutoff life will go on indefinitely and you would be finding
19 something to pick at the other side about. Can it be
20 November 30th? December 15th? What's your pleasure to get all
21 of this done, etc.?

22 MR. LYTTLE: Your Honor, with the Thanksgiving
23 holiday, we need a little past November 30.

24 THE COURT: Give me a date. If there is agreement, I
25 am probably going to agree with all of you.

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1 MR. LYTTLE: I think we certainly could make
2 December 15th work.

3 I think we have agreement on December 15th, your
4 Honor.

5 THE COURT: All right. That's it. And that means
6 nothing new. Just finish up the stuff that has been lurking,
7 etc. Work with Ms. Grossman on the predictive coding par side
8 of life. Get it all done.

9 And your stay of depositions expires December 1,
10 December 15?

11 MR. LIMAN: I think, December 2.

12 THE COURT: I assume you are going to make another
13 application to Judge Berman?

14 MR. LIMAN: You know, we'll see what happens with
15 respect to the motion, and if we need to we will make another
16 application next week or so.

17 THE COURT: All right. We'll see where that goes.
18 You might consider whether there are any depositions on which
19 BSGR has so little interest that certain things can go forward
20 with BSGR getting the transcript and preserving its rights, or
21 not. You know, if you don't do that and if Judge Berman gives
22 you a further stay, at some point the stay is going to be
23 lifted and for all the nice long period you have had to get
24 your document discovery way out of proportion to the merits,
25 perhaps you are going to wind up finding you have a lot less

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1 time and will perhaps be multi-tracking whatever on the
2 depositions. So if there is anything that can go forward while
3 we are in a period that we're still waiting for the go and
4 Judge Berman --

5 MR. LIMAN: I can inform your Honor that from our
6 perspective there are no U.S. witnesses. So, you know.

7 THE COURT: Which means what going forward?

8 MR. LIMAN: Which means that depositions will either
9 have to be scheduled abroad or with respect to people who are
10 potentially relevant, the plaintiffs will have to figure out
11 what kind of methods exist to obtain that testimony.

12 THE COURT: All right. Well, you know, any people who
13 are party witnesses I suspect, you know, whether you decide on
14 some cost sharing to bring them here or whether you decide to
15 shlep around the world, but either you are going to be able to
16 control them and have them appear for a deposition somewhere or
17 you're not, but in which case they are not going to be trial
18 witnesses either. So you all should start working that out and
19 thinking about it.

20 In certain countries, if you have to take a consent
21 deposition, it may have to be at the embassy. That used to be
22 the rule. And, you know, you can't necessarily get into the
23 embassy on two days' notice. So it may be premature because
24 you can't reserve the embassy until you know when you are going
25 to start doing depositions and et cetera. On the other hand,

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1 if you find out that, you know, a lot of witnesses are in
2 country X and there is a six-month wait for the embassy, you
3 might want to put your request in so that when Judge Berman
4 rules and you start taking depositions you will be able to have
5 your slot reserved at the embassy.

6 Start, you know -- at a minimum, I think you all are
7 in a position now to decide what witnesses you are going to be
8 asking for from each other, what nonparty witnesses you are
9 going to be going after. And on that I can't help you at all
10 other than to sign letters rogatory, and if it is the U.K. you
11 might be in good shape but if it is elsewhere probably not but
12 you'll try. But, you know, figure out what you're going to
13 want to do in terms of, you know, one plaintiff deposition
14 followed by one defendant deposition, a two-to-one ratio or
15 whatever you are all going to do, start thinking ahead.

16 You know, I probably would not object to you asking
17 Judge Berman, you know, for a stay to the end of the year if he
18 hasn't decided by then. But after that at some point either
19 there will be a decision or without the decision you may have
20 to start going forward, and preplanning on that will put you in
21 much better stead because once we start and, you know, you may
22 be getting lots and lots of frequent flier miles but you are
23 going to be moving very quickly during that stage. This case
24 has been for me, although it is a big case, around a lot longer
25 than I would like it.

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1 Do we need a December conference date?

2 MR. LIMAN: I don't think so.

3 (Pause)

4 MR. LYLE: I don't think we need one. I think we are
5 all --

6 THE COURT: You know, it is so nice to see agreement
7 between the two of you and the other people who were silently
8 nodding their head or ignoring the issue. So we'll leave it
9 that you will contact me if there are any disputes that need
10 the Court's resolution. Otherwise, you will get everything
11 done by December 15th and start planning for the barrage of
12 depositions once you are given the green light to go do that.

13 MR. LYTTLE: Your Honor, may I clarify one point?

14 THE COURT: Yes.

15 MR. LYTTLE: The December 15th date does not apply to
16 the pending Hague request that we have?

17 THE COURT: Correct. Whatever is outstanding is, you
18 know, not going to be stopped on the ground that, you know, my
19 counterparts abroad are slower than I am or whatever. But no
20 new ones without Court leave, you know, or party agreement,
21 should there be that.

22 MR. LIMAN: Your Honor, I assume the same also applies
23 to Ms. Grossman's processes which are ongoing.

24 THE COURT: I would like, subject to her availability,
25 etc., for that to be all wrapped up by December 15th. But if

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1 she needs more time or she agrees with you that you all need
2 more time, you will apply to me for that. But I'm hoping you
3 are near the end of the road with her and that you're meeting
4 with her or you met with her yesterday or you are going to --

5 MR. LIMAN: There was a meeting with her yesterday.
6 Without going into detail, there is a pending proposal that we
7 made --

8 THE COURT: Never mind. I don't want to know. Just I
9 am hopeful that December 15th applies to that. If Ms. Grossman
10 thinks you deserve more time than that, she'll let me know or
11 you'll let me know.

12 But, you know, the idea is to be done so that if Judge
13 Berman says motions all denied, depositions go forward, that
14 you are ready to go and not, oh, OK, we still need to play with
15 the car model a little more and we're not ready and won't be
16 for another month.

17 All right. Happy Thanksgiving all, and in the
18 unlikely event I don't see you before the end of the year,
19 happy holidays, happy new year.

20 ALL COUNSEL: Thank you, your Honor.

21 THE COURT: All right.

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